

WATER RIGHTS

Resource Contact: Coordination & Hydrology Section

Effective Date: 10-23-90

Revised: 10-23-90

References: Chapter 90.03 RCW
Chapter 90.44 RCW
Chapter 508-12 WAC

Purpose: To ensure statewide consistency, conformity with state law, and equality of service to the public in the administration of water rights.

Application: This policy applies to all applications to appropriate water and applications for change of water right received pursuant to Chapter 90.03 and 90.44 RCW.

1. Administration of applications will be consistent statewide

To ensure conformity with state law, equality of service to the public, and consistency between regions all applications to appropriate water and applications for change of water right will be processed in accordance with the procedure on water rights processing (PRO-1000).

2. Processing applications is region specific

Procedural differences exist among the regions in the processing of applications to appropriate water and applications for change of water right. These differences exist because of historical work patterns and expertise of the personnel. Procedural differences are hereby authorized, as long as regional procedures are in agreement with and further the purposes of this policy.

Hedia Adelsman
Program Manager
Water Resources Program

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POLICY FOR PROVIDING ASSISTANCE TO APPLICANTS FOR WATER RIGHTS TO OBTAIN AND DEVELOP WATER SUPPLIES

Resource Contact: Policy and Planning Section

Effective Date: 08/28/98

Revised: NEW

References: Chapter 443, Laws of 1997 (SSB 5505), assistance for applicants for water rights to obtain and develop water supplies. Amended RCW 43.21A.064.

Purpose: To assist persons seeking new water rights, for purposes consistent with the land use permitted for the area in which the water is to be used and the population forecast for the area under RCW 43.62.035, to obtain and develop water supplies.

Application: All persons seeking to obtain new water rights for purposes that are consistent with land uses permitted for the area in which the water is to be used and the population forecast for the area under RCW 43.62.035.

1. Ecology to assist water right applicants to obtain and develop water supplies

Upon the request of an applicant for a water right, Ecology will provide assistance in obtaining or developing an adequate and appropriate supply of water if the proposed use of water is consistent with:

- a. the land use permitted for the area in which the water is to be used;
- b. the population forecast for the area under RCW 43.62.035; and
- c. if the applicant is a public water supply system, any applicable land use, watershed and water system plans.

2. Ecology to search its records

Upon receipt of a request for assistance, Ecology will inform the applicant of its intent to conduct a search of its records for existing water rights by the township, range, and section of the client's proposed point of diversion or withdrawal. The applicant may request in writing an expanded scope of search.

3. Ecology to provide listing of its records

Ecology will provide the applicant with a listing of all water rights in the client's specified search area resulting from the search of its records.

4. Ecology to provide documents

If requested by the applicant, Ecology will provide copies of any documents describing water rights (certificates, claims and accompanying maps) identified by the search of its records, along with instructions for understanding that information.

5. Ecology to contact Department of Health

Ecology will also contact the appropriate Department of Health Drinking Water Operations Regional Office about any public water systems in the vicinity of the request that might be capable of providing water to meet the needs of the applicant.

Keith E. Phillips
Program Manager
Water Resources Program

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Resource Contact: Coordination & Hydrology Section

Effective Date: 10-31-91

Revised: 10-31-91

CONSUMPTIVE AND NONCONSUMPTIVE WATER USE

References: Chapter 173-500 WAC

Purpose: To expand upon the definition of consumptive and nonconsumptive water use as defined in WAC 173-500-050.

Application: These classifications of water use apply to water right appropriations and adjudicated certificates issued pursuant to chapters 90.03 and 90.44 RCW.

The consumptive and nonconsumptive classifications of water are important when assessing the quantity of water allocated. Water used consumptively diminishes the source and is not available for other uses; whereas nonconsumptive water use does not diminish the source or impair future water use.

1. Consumptive Use of Surface and Ground Water

Consumptive water use causes diminishment of the source at the point of appropriation.

Definition: Diminishment is defined as to make smaller or less in quantity, quality, rate of flow, or availability.

By-pass reach defined. A water use may be consumptive to a specific reach of a stream when water is diverted, used, and returned to the same source at a point downstream not in close proximity to the point of diversion. The stream reaches between the point of withdrawal and point of discharge is the by-pass reach.

2. Nonconsumptive Water Use, Surface Water

Surface water use is nonconsumptive when there is no diversion from the water source or diminishment of the source. Additionally, when water is diverted and returned immediately to the source at the point of diversion following its use in the same quantity as diverted and meets water quality standards for the source, the water use is classified as nonconsumptive. Examples of this classification include the following:

- a. Water use in hydroelectric projects when the water is not diverted away from the natural confines of the river or stream channel. These hydroelectric projects are commonly called run-of-the-river projects.
- b. Water use in some beautification ponds and fish hatcheries when the outflow is returned to the point of diversion, i.e., there is no bypass reach in the system. The

continuous use of water by such a facility does not result in diminishment of the source; inflow is equal to outflow.

These facilities normally require water to fill or charge the system once a year. The water used to fill or hydraulically charge such a system is consumptive and does cause a diminishment of the source. Water use to fill these facilities will be allowed, subject to instream flows and existing rights, when water is available.

Exception to 2.B. Water use can be classified as nonconsumptive when the water is returned to the same pool from which it is diverted and the pool's water elevation is not changed by the initial start-up and stopping of the diversion.

Definitions:

A pool in a river system is a body of water which has the same water surface elevation, within 0.05 of one foot, at any point between the point of diversion and the point of discharge.

A pool in a lake system is the body of water with no flow restriction between the diversion point and the point of discharge and the velocity of the water at both points is the same or within ten (10) percent of each other. If the diversion point and the discharge point are separated by a restrictive, natural or artificial, channel the water bodies are considered separate and distinct.

Some of the above described projects may cause an increase in bank storage, evaporation rate, or preclude others uses of the water body in the vicinity of the project. The Department recognizes the consumptive nature of these factors. However, due to the complexity of quantifying these factors, it is the Department's policy to classify the project's water use as nonconsumptive.

3. Nonconsumptive Water Use, Ground Water

Ground water use is nonconsumptive when there is no diminishment of the source. In order not to diminish the source, the withdrawn water is injected or infiltrated immediately back to the aquifer. The water must be returned in the same quantity and quality (excluding temperature change) at a point in close proximity to the withdrawal wells. An example of this use is a heat pump.

Before issuing a permit which proposes to use injection wells, ensure that the applicant can obtain an injection well permit if required by the Water Quality Program. See Chapter 173-218 WAC.

4. CONCURRENT USE OF GROUND AND SURFACE WATER

Combined use of ground and surface water use may be classified nonconsumptive if the quantity of water captured is returned in close proximity to the source immediately after use.

Direct hydraulic continuity between the source and point of discharge must be unequivocal.

When a project proposed nonconsumptive combined use of surface and ground water, the draft report of exam shall be sent to the section supervisor of the Hydrology and Coordination Section for review and comment.

Hedia Adelsman
Program Manager
Water Resources Program

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Resource Contact: Policy and Planning Section

Effective Date: 1-21-04

PRIORITY PROCESSING—WATER BUDGET NEUTRAL PROJECTS

References: Chapter 173-152 WAC, Chapter 173-500 WAC

Purpose: To clarify the definition of nonconsumptive water use in the context of priority processing of competing applications under WAC 173-152-050.

Application: Ecology adopted Chapter 173-152 WAC in order to identify criteria for priority processing of competing applications. WAC 173-152-050(2) provides that an “application may be processed prior to competing applications if the department determines:

- (a) Immediate action is necessary for preservation of public health or safety; or
- (b) The proposed water use is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment.”

This policy clarifies when projects may be considered nonconsumptive in the context of priority processing ahead of competing applications, consistent with the “no diminishment” nonconsumptive use definition in WAC 173-500-050.

Definitions: The following definitions are intended within this policy:

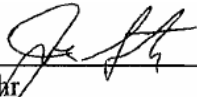
1. “Nonconsumptive Use” is a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.
2. “Water Budget Neutral Project” means a project where diversions or withdrawals of waters of the State are proposed in exchange for discharge of at least an equivalent amount of water from other water rights, donation of water rights into trust, relinquishment of other water rights, or other mitigation projects that result in no diminishment of the source.

Nonconsumptive Water Use, Priority Processing under Chapter 173-152 WAC. The following examples are intended to clarify the Department’s policy in classifying a project as nonconsumptive pursuant to WAC 173-152-050(2)(b):

1. A project entailing the issuance of a nonconsumptive water right permit (i.e., where there is no diversion or diminishment of the source).
2. A project where the direct use of waters of the State is proposed in exchange for discharge of at least an equivalent amount of reclaimed water under a Chapter 90.46 RCW permit.

NEW: 1-21-04

3. A water budget neutral project (e.g., a project which includes a consumptive water use component that is offset by some other commensurate reduction in water use so that the project, as a whole, causes no diminishment of the source).



Joe Stohr
Program Manager
Water Resources Program

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NEW: 1-21-04

Resource Contact: Policy and Technical Support Section

Effective Date: 10/7/94

Revised: 12/2/94

References: Chapter 90.03 and 90.22 RCW

POLICY FOR CONVEYING STOCKWATER AWAY FROM STREAMS TO PROTECT WATER QUALITY

Purpose: To provide a simple, consistent response to water right related issues when conveying stockwater away from streams to protect water quality and stream habitat.

Application: This policy is to provide guidance to all water resources staff when responding to inquiries or inspecting surface water diversions intended to remove livestock from streams for the purpose of protecting water quality and stream habitat. This policy does not apply to stockwatering relating to feedlots and other activities that are not related to stock grazing land at more than the lands carrying capacity.

1. Ecology shall encourage conveyance of stockwater away from streams for the purpose of protecting water quality.

The Department of Ecology recognizes that removing livestock from streams will protect water quality and improve vegetative zones associated with stream banks. The change of water right process (90.03.380 RCW) will not be required when small amounts of water consistent with historic practice are diverted (screened and piped) to nearby stockwater tanks for consumption by livestock. If a float or demand type valve is not used, the tank overflow must return to the same source, at or near the point of diversion. The stock tank must serve no greater number of stock than historically range that parcel of property. The quantity consumed from the stock tank should not exceed the quantity consumed if the stock drank directly from the stream.

2. Systems designed to convey stockwater to a stock tank must have a minimum impact to the bypassed reach of the stream.

Stockwater tanks shall be located close to the surface water source, and have as short a bypass reach as possible, not more than is necessary to provide gravity flow. The purpose in modifying an existing direct access to the stream by stock must be to afford protection to the water body, stream bank, and associated vegetative zone.

The decision to divert stockwater from the stream and into a tank does not constitute an adjudication of any claim to the right to the use of the water as between the claimant and the state, or as between one or more water use claimants and another or others.

Carol L. Fleskes

Water Resources Program Manager

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POL-1030 WATER RESOURCES PROGRAM POLICY

Resource Contact: Policy Planning Section

Effective Date: 10-31-91

Revised: 09-13-01

References: RCW 90.03.290 and RCW 90.44.060

PRELIMINARY PERMITS

Purpose: To provide guidance to Program personnel in the use of preliminary permits. Preliminary permits require applicants to conduct studies, surveys, and investigations necessary to provide the information Ecology needs to properly assess the subject application.

Application: This policy applies to all preliminary water right permits issued pursuant to Chapters 90.03 and 90.44 RCW.

1. Preliminary permits

Preliminary permits are issued to retain a priority date and establish a formal timeline and data collection plan when additional information is needed to make a permit decision. The preliminary permit requires the applicant to make surveys, investigations, or conduct studies to satisfy the information needs of the department.

Program personnel issuing a preliminary permit must fully inform the applicant that issuance of a preliminary permit carries a risk for the applicant. The applicant's risk is that failure to comply with the permit requirements will result in cancellation of the permit and rejection of the application. Once issued, the substance of the preliminary permit will significantly direct and prescribe future consideration of the application.

Preliminary permits also may authorize drilling and testing of ground water wells. Preliminary permits issued for such purposes should clearly state that water use for purposes other than those authorized by RCW 90.44.050 is prohibited.

A preliminary permit does not authorize the beneficial use of water.

2. Use of preliminary permits

When the department does not have adequate information to address water availability, detriment to public welfare, beneficial use, impairment of existing rights, or other relevant questions at the time the application or application for change of water right is filed, and the necessary information might be obtained by surveys or investigations conducted by the applicant, a preliminary permit may be appropriate.

The decision to issue a preliminary permit is discretionary; there is no requirement that a preliminary permit be issued. If a preliminary permit is issued, Ecology personnel should ensure, as much as possible, that the work proposed to be done under the preliminary permit can be done in the time allowed and will not be out of date when a permit decision is made. Do not issue a preliminary permit if it is clear the information needs or studies to be done cannot be done in the three-year period allowed by statute. The preliminary permit should be as detailed and specific as possible. Generally, the permittee will not collect any information not identified or specifically required by the preliminary permit. However, the permittee is not precluded from collecting data not required by the preliminary permit.

In a very few cases, data collection and analysis under a preliminary permit will create additional questions or information needs not identified in the preliminary permit. In such cases, Ecology may issue a second, separate and distinct, preliminary permit. However, issuance of an additional preliminary permit does not extend the three-year time period authorized by statute for completion of work required under a preliminary permit for a specific application. If Ecology issues a preliminary permit which, for whatever reason, does not accurately ask for the necessary information, the department shall issue a new preliminary permit requesting the correct information.

3. Application process

A complete water right application or application to change a water right form, either new or pending, and the application fee, must be filed to begin the process.

When public notice of the proposed appropriation is to be published is at the discretion of the regional section supervisor. If a preliminary permit is issued for drilling and testing, public notice may be advertised upon successful demonstration of the well capacity. If an appropriation is proposed to be developed upon completion of the preliminary permit requirements, public notice should take place immediately.

When a preliminary permit is going to be used, the regional staff person should make a written recommendation to the regional section manager stating why a preliminary permit is justified. The recommendation is for record-keeping only.

4. Format of a preliminary permit

A preliminary permit is issued in letter format and signed by the regional manager. At a minimum the letter shall:

- a. Identify the applicant, application number, scope of the project and its attributes (i.e. source of water, point of diversion or withdrawal, etc.);
- b. State the specific conditions of the data collection plan;
- c. Require a showing of work done under the preliminary permit and progress reports if warranted;
- d. Contain an expiration date (not to exceed three years);
- e. State that no beneficial water use is authorized;
- f. Require wells to be constructed in accordance with chapter 173-160 WAC, and require capping of ground water wells, if applicable; and
- g. Contain a statement that if the applicant fails to comply with the terms of the preliminary permit, the preliminary permit and the application or applications on which it is based shall be canceled pursuant to RCW 90.03.290.

Issuance of a preliminary permit is an appealable action. As an appealable action, preliminary permit letters shall contain the standard paragraph regarding appeals.

5. Time duration

Preliminary permits authorize investigations and surveys for a time period of not more than three years. The time period authorized shall be reasonable for the work required. All preliminary permits issued will contain a specific expiration date.

The permittee may request, prior to the preliminary permit expiration date, additional time to comply with the preliminary permit. Additional time beyond the initial three years may be granted with the approval of the Governor or designee and only upon a showing of work done under the preliminary permit. The showing of work must also establish the good faith, intent, and ability of the permittee to conduct the studies and provide the information. In no case shall a preliminary permit, with an extension, exceed five years in duration.

The preliminary permit terminates automatically at the end of the stated investigation period or, if an extension is granted in writing by the department, at the end of the extension period.

6. Termination of preliminary permit

The department must review, in a timely manner, any information generated under the preliminary permit, and make a decision whether or not the terms of the preliminary permit have been complied with. The department's decision also must be communicated in writing to the permittee in a timely manner.

When a permittee complies with the terms of the preliminary permit, the department will make a decision on the underlying application.

If the permittee fails to comply with the terms of the preliminary permit, the preliminary permit and the application or applications on which it is based shall be canceled pursuant to RCW 90.03.290.

7. Combined use of a preliminary permit and a permit for temporary use

If water use is necessary to obtain information required by a preliminary permit, the applicant must request a temporary permit, pursuant to RCW 90.03.260 (See POL-1035). A permit for temporary water use shall be issued in conjunction with the preliminary permit to authorize the beneficial water use.

Joe Stohr, Manager
Water Resources Program

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TEMPORARY AND EMERGENCY DROUGHT PERMITS

Resource Contact: Coordination and Hydrology Section

Effective Date: 10-31-91

Revised: 09-10-92

References: RCW 90.03.250, RCW 90.44.060, RCW 43.83B.405, Chapter 173-166 WAC

Purpose: To provide guidance to Program personnel in the use of temporary and emergency drought permits to appropriate water.

Application: This procedure applies to all temporary permits issued pursuant to Chapters 90.03 and 90.44 RCW, and emergency drought permits issued pursuant to chapter 173-166 WAC.

1. Use of temporary permits

Temporary permits authorize water use during the pendency of an application review when requested.

The four tests for issuance of a permit (water availability, public interest, impairment of existing rights, and beneficial use of the water) must be considered prior to granting a temporary permit. Requirements of the State Environmental Policy Act (SEPA) must be satisfied.

Temporary permits are not to be used to circumvent the backlog. The issuance of a temporary permit during the pendency of application review is to make a decision on the application out of priority sequence. A temporary permit should only be issued when you are confident that a permit will be approved in a reasonable time, but circumstances do not allow the complete deliberative process to issue a final decision.

Temporary permits should not be used solely to legitimize an illegal water user, pending a decision on their application.

Temporary permits are not to be used to authorize drilling of ground water wells for testing aquifer characteristics, use a Preliminary Permit (POL-1030).

2. Application process

A complete water right application form and examination fee is required in addition to a request for a temporary permit. All applicants who request a temporary permit must justify in writing why a temporary permit should be granted. The application is processed through public notice in accordance with POL-1000.

Requests for temporary permits are evaluated with respect to the following criteria:

- Imminent threat to public health and safety,
- Economic emergency caused by unforeseen natural events, and
- High degree of public interest.

Regional staff shall make a written recommendation to the regional section supervisor concerning all applications for temporary permit.

3. Format of a temporary permit

Temporary permit may be issued in letter format, signed by the regional section supervisor. At a minimum the permit shall state:

- Applicant's name, application number, source, quantity of water for use, and place of use,
- The specific conditions and an expiration date,
- A statement that if the applicant fails to comply with the terms of the temporary permit it may be revoked, and
- A statement that the issuance of a temporary permit in no way guarantees a standard permit will be issued.

Issuance and revocation of a temporary permit is an appealable action. As an appealable action, temporary permit letters shall contain the following paragraph:

Any person wishing to appeal this action may obtain review by submitting a written request, within thirty (30) days of receipt of this order, to the Washington Pollution Control Hearings Board, 4224 6th Avenue SE, Building 2, Rowe Six, P.O. Box 40903, Lacey; Washington 98504-0903. Concurrently send to the Director of the Department of Ecology, Mail Stop 7600, P.O. Box 47600, Olympia, Washington 98504-7600, a copy of the request for review. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

4. Time duration

The time duration for temporary permits will be during the pendency of the application review.

Temporary permits may be revoked for failure to comply with the terms of the permit.

5. Status of a temporary permit

Temporary permits issued during the pendency of an application review are generally superseded by a standard permit and are part of the permanent record.

If upon complete analysis, a permit will not issue, the temporary permit is canceled, the standard permit denied, and the application rejected.

6. Drought relief and emergency drought permits

Whenever a drought is declared pursuant to RCW 43.83B.405, the issuance of emergency permits shall be in agreement with RCW 43.83B.410, in addition to this policy. See Chapter 173-166 WAC.

For emergency permits issued pursuant to Chapter 173-166 WAC the process is generally the same as temporary permits, with the following:

- The application is for a previously established activity conducted under a valid permit or certificate, within a geographic area declared to be in drought;
- The applicant is projected to receive less than seventy-five percent of normal water supply as a result of drought conditions and is expected to experience undue hardships as a result;
- Water obtained through the issuance of an emergency permit must be put to beneficial use in lieu of water which is unavailable because of drought conditions;
- Decision will be provided to the applicant within fifteen days of receipt of the application; and
- Compliance with public notice and SEPA requirements is waived.

Hedia Adelsman
Program Manager
Water Resources Program

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PERMITS FOR SHORT-TERM WATER USE

Resource Contact: Coordination and Hydrology Section

Effective Date: 09-10-92

Revised: New

Purpose: To provide guidance to Program personnel in the use of permits to authorize short-term water use.

Application: This procedure applies to all permits issued pursuant to chapters 90.03 and 90.44 RCW that authorize the short-term use of water.

1. Permits for short-term water use

Permits for short-term water use authorize water use in emergency situations or for short-term, nonrecurring projects of no more than four months duration. Regional section supervisors shall use their discretion in evaluating emergency situations. Examples of short-term water uses are hydrostatic testing of pipelines, water use associated with construction activities, and dust control.

Entities wishing to use water with no intent to appropriate the water on a long-term basis are issued this type of authorization.

2. Application process

A complete water right application form and examination fee is required.

Advertising the application for public notice is at the discretion of the regional section supervisor. Generally, advertising the application is advised.

Verbal requests and/or authorizations for permit for emergency use are permissible, but they must be followed up in writing. Only persons with signature authority to sign permits can give verbal authorizations.

The four tests for issuance of a permit (water availability, public interest, impairment of existing rights, and beneficial use of the water) must be considered prior to granting a permit.

Staff shall make a written recommendation to the regional section supervisor concerning all applications for permits for short-term water use. This recommendation is not necessarily a report of examination, but should justify why a permit should issue.

3. Format of a permit for short-term use

A permit for short-term water use may be issued in letter format, signed by the regional section supervisor. The letter shall state the specific conditions of the permit including:

- Applicants name, application number,
- The source, place of use, quantity of water, and time of use,
- An expiration date,
- A statement that if the applicant fails to comply with the terms of the permit, the application upon which it is based may be rejected and the permit revoked, and
- No long-term appropriation as contemplated by chapter 90.03 RCW is taking place.

No permit fee is required.

4. Time duration

The time duration for short-term permits will vary for each proposal; generally short-term is less than four months. The time duration for short-term may be modified based on the specific circumstances of a project.

All permits issued for short-term water use will contain an expiration date. Permits for short-term water use will be revoked for failure to comply with the terms of the permit.

5. Special considerations

No permits for short-term water use are to be issued when the source of water is closed.

No impairment of instream flows established by rule or administratively under RCW 75.20.050 are to be authorized.

For short-term use of ground water, the short-term permit should contain an admonishment pertaining to water use in excess of 5000 gallons per day after the expiration of the short-term permit.

6. Status of applications submitted for a short-term permit

During the active stage of permits for short-term water use, the application and permit should be filed by Section, Township, Range within each Water Resource Inventory Area for the source of water.

Applications for permits for short-term water use are rejected upon expiration of the short-term permit which issues. A permanent record (within WRATS) of permits for short-term water use is now developed; however, a record of the action may be maintained in regional office.

Hedia Adelsman
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Water Resources Program

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EXTENSION OF TIME ON PERMITS AND CHANGE AUTHORIZATIONS

Resource Contact: Coordination and Hydrology Section

Effective Date: 10-31-91

Revised 10-31-91

References: RCW 90.03.320, RCW 90.44.060, RCW 90.03.380, RCW 90.44.100

Purpose: To provide guidance to program personnel in granting extension of time in any of the development phases of a permit or within authorizations for change of water right.

Application: This procedure applies to all requests for extensions of time and the granting or denial of the request received pursuant to RCW 90.03.320 or 90.44.060 and development periods associated with change authorizations pursuant to RCW 90.03.380 and RCW 90.44.100.

1. Extensions of time on permits are requested in writing

Every extension of time for a development phase of a permit must be requested in writing. The applicant must provide good cause for needing the extension, and demonstrate the due diligence and good-faith efforts made to comply with the original construction schedule. The proper statutory extension fee must accompany the extension request.

Definitions:

Good Cause is a substantial reason and depends upon the circumstances of each permit decision.

Good Faith is a sincere desire to complete the project by the permittee and encompasses an honest intent, and the absence of design to defraud.

Due Diligence is such a measure of prudence and activity as is properly expected and reasonable depending on the circumstances of each permit decision.

2. Granting extensions of time on permits

It is at the discretion of the regional section supervisor to judge the good faith, due diligence and good cause of the permittee. Extensions may be granted for additional time periods as may be reasonably necessary to complete the project, having due regard to the good faith of the applicant and the public interests affected.

Time limitations used in extensions shall take into account the complexity of the project. Generally permits are extended on a year by year basis, but longer time periods may be used when warranted. The number of years to put water to complete beneficial use should generally not be extended for more years than the original development schedule.

When granting any extension beyond the first year, set specific reasonable goals that will be required of the permittee during the extension period.

3. Denying extensions of time on permits

Requests for an extension of time on permit development shall be denied if the applicant has not demonstrated good faith and diligence in meeting the construction schedule.

Denials must be based upon the permittee's failure to comply with the construction schedule and inability to timely complete the project.

If an extension of time request is denied, either:

- a. Initiate cancellation of the permit, or
- b. Initiate certification of the developed portion of the permit.

4. Format of an extension or denial

Extensions or denials of additional time to perfect water use under a permit are issued in letter format, and is an appealable action. The appeal can be from either the permittee or the general public. Extensions or denial of an extension request shall be signed by the regional section supervisor and contain the following paragraph:

Any person feeling aggrieved by this action may obtain review there of by application, within thirty (30) days of receipt of this order, to the Washington Pollution Control Hearings Board, 4224 6th Avenue SE, Building 2, Rowe Six, P.O. Box 40903, Lacey; Washington 98504-0903. Concurrently send to the Director of the Department of Ecology, Mail Stop 7600, P.O. Box 47600, Olympia, Washington 98504-7600, a copy of the application for review. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Hedia Adelsman
Program Manager
Water Resources Program

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

ADMINISTRATIVE POLICY FOR RECORDING THE AGREED DIVISION OF WATER RIGHTS AMONG MULTIPLE PROPERTY OWNERS

Resource Contact: Policy and Planning Section

Effective Date: July 3, 2003

Revised: New

References: RCW 90.03.380(1); RCW 90.54.030(1) and (4); RCW 90.14.010;
RCW 43.21A.090(7); and WAC 508-12-200.

Purpose: To document generally applicable procedures that the Department of Ecology uses to track and record the agreed division of a water right where multiple property owners own land to which the water right is appurtenant.

In Ecology's 2002 Report to the Legislature "*Improving the Administration of Water Right Records*", the Department of Ecology identified a need to correlate water right ownership information with real property information. Benefits of this correlation include increased efficiency when notification is required for proposed actions, facilitation of water marketing, improved access of water right information by the public, and increased certainty in vested property rights. The referenced statutes provide that a water right is appurtenant to the land on which beneficial use occurs, and that Ecology is authorized to track and provide records of such appurtenancy.

Application:

This policy and the procedures below generally apply to water right certificates where beneficial use has occurred and the water right has become appurtenant to the land on which beneficial use occurs. This policy does not apply to the following types of water rights:

- Water right permits and water right applications. Generally, permits and applications for water rights are not perfected property rights subject to RCW 90.03.380. However, ownership and interest in these documents may be assigned pursuant to RCW 90.03.310 (see also WAC 508-12-200).
- Water rights where there is a shared character to the right, including but not limited to those issued to municipalities, irrigation districts, and partnership ditches. Nothing in this policy prevents a water right holder from seeking a change via RCW 90.03.380, RCW 90.44.100 or other applicable statutes, which may, in addition to a change, clarify the right's ownership among multiple property owners.
- Water right claims, certificates of change on claims, and certificates of change on vested rights for which no original certificate exists, unless there is an active change application pending on the water right claim. Nothing in this policy prevents a water right holder from seeking a change via RCW 90.03.380, RCW 90.44.100 or other applicable statutes, which may, in addition to a change, clarify the right's ownership among multiple property owners.
- Water rights where division of property has occurred in a manner not consistent with

historic water use, or in which historic water use has not been consistent with the original right. Nothing in this policy prevents a water right holder from seeking clarification as to the apportionment of the water right among multiple property owners via RCW 90.03.380, RCW 90.44.100 or other applicable statutes.

Evaluation:

Where multiple property owners own a portion of land to which a single water right is appurtenant, said property owners may apply and receive from the Department of Ecology, a superseding document describing their share of the original water right. These superseding documents will clarify the apportioning of said rights as agreed to by all the property owners who own the subject property within the authorized place of use of the original right. Agreement of this apportioning shall reflect the historic beneficial use of water on the property, and it shall be the responsibility of each property owner to verify that his or her “share” of the original right reflects the historic beneficial use of water on the property.

Requests to confirm the division of a water right may be made at the time the change in ownership of the property occurs (effective on the property closing date), or may be after such property transfer has occurred. The administrative issuance of superseding documents reflecting this division does not authorize a change pursuant to RCW 90.03.380, RCW 90.44.100, or other applicable statutes, including changes that may have occurred in the past but outside the terms and conditions of the original water right.

The following steps summarize how the Department of Ecology will document the division of water rights covered by this policy.

1. All property owners owning land to which the original water right is appurtenant must agree as to how the water right is to be divided based on historic beneficial use. Confirmation of a division of a water right in a manner other than historic beneficial use is not covered by this policy.
2. Such agreement will be documented by said property owners' signatures on Ecology's standard *Request for Administrative Confirmation of Division of a Water Right (Form ECY 070-88)*. In the event that all property owners' signatures are not provided, but where clear documentation by court decree, property transfer deed, or other document establishes the division of such rights, Ecology may at its sole discretion waive this comprehensive signatory requirement. In this event, Ecology shall notify the property owner for which signature is absent by certified mail, and will not issue superseding documents pursuant to this policy until thirty (30) days from receipt of the notice. In the event that a response to said letter is provided within this timeframe, Ecology will consider such response in its decision to issue superseding documents.
3. The *Request for Administrative Confirmation of Division of a Water Right* form shall be accompanied by property transfer deeds, county tax parcel identification records, and any additional information needed to demonstrate ownership of the lands within the authorized place of use of the original water right.
4. Upon receipt of clear documentation as required by this policy, Ecology will issue superseding documents to each property owner consistent with the agreed division of the right on the request form. Where certificated water rights are divided, superseding certificates shall issue. Where certificates of change on adjudicated or certificated rights are divided, superseding certificates shall issue. Where certificates of change on water

right claims or vested rights are divided, the file shall be amended and the signed *Request for Administrative Confirmation of Division of a Water Right* form shall be included in the file to serve as the superseding document.

5. Ecology's confirmation of the division of a water right is administrative in nature, and will not include an evaluation of the extent and validity of the water right to be divided. A water right is valid to the extent that it has been put to beneficial use consistent with the terms and conditions of the authorization. Language to this effect will be included on each superseding document; said language shall remain on a superseding document until the extent and validity of the right embodied by the superseding document is determined. Example language is provided below:

"The division of Certificate S1-123456C into Superseding Certificate S1-123456(A)C, S1-123456(B)C, and S1-123456(C)C shall not be construed as validation as to the extent of Certificate S1-123456C as originally authorized. The amounts provided on the superseding portions of said water right reflect agreement among the owners of the described place of use, but are not confirmed by Ecology in this recording of the division of said right. The actual amounts authorized by the superseding certificates are subject to the historic beneficial use of Certificate S1-123456C."

6. Ecology will not update or add new conditions to a water right as a part of the administrative documentation of the division of that water right.
7. If following the division of the right, a property owner seeks to use water in a manner other than that authorized by the superseding water right document; said property owner shall file a change pursuant to RCW 90.0.380, RCW 90.44.100, or other applicable statutes.
8. As part of an evaluation for change or transfer, Ecology will make a tentative determination as to the extent and validity of the portion of the original water right proposed for change and embodied by the superseding water right document issued in accordance with this policy.

Joe Stohr
Water Resources Program Manager

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.



Request for Administrative Confirmation of Division of a Water Right

Instructions: Complete the information required, attach referenced documents, and forward to the appropriate regional office address shown on the back of this form.

WATER RIGHT INFORMATION

Water Right Number: _____

Name on Certificate: _____

- ☐ Attach a copy of subject water right.
- ☐ Attach a map of the authorized place of use.
- ☐ Attach a list of all property owners and property owner contact information, including name, address, and telephone number.
- ☐ Provide tax parcel identification numbers and acreages for each property owner within the authorized place of use.
- ☐ Attach a copy of property transfer deed, contract, or other documentation indicating division of land and appurtenant water rights.

PROPERTY OWNER AGREEMENT

1. Signatories agree to the division of the subject right consistent with the apportioning presented herein. Agreement of this apportioning reflects the historic beneficial use of water on the property.
2. It is the responsibility of each property owner to verify that his or her "share" of the original right reflects the historic beneficial use of water on his property. If, after a superseding document is issued by Ecology, it is determined that the historic beneficial use of water on that property is less than the quantities agreed to herein, Ecology shall reduce said quantity to the portion put to beneficial use on that property.
3. The division of the original right into superseding documents shall not be construed as validation as to the extent and validity of the original right. The amounts authorized on the superseding portions of said right are not confirmed in this division. The actual amounts authorized on the superseding documents are subject to the historic beneficial use on the appurtenant property.
4. Each property owner shall be responsible for payment of fees associated with the issuance of superseding documents.

DESCRIPTION OF DIVISION OF THE WATER RIGHT AMONG PROPERTY OWNERS (Note: for more than 2 property owners, attach additional pages as necessary).

Property Owner Name (1):

Address:

Phone Number:

Tax Parcel Numbers Owned within Authorized Place of Use:

Share of Qi, (gpm or cfs):

Share of Qa, (acre-feet):

Authorized purpose(s) of use:

Check one of the following:

- ☐ The authorized point of diversion is on my property and will continue to be used.
- ☐ The authorized point of diversion is not on my property, but I have entered into a shared use agreement with the owner of the authorized diversion point.
- ☐ The authorized point of diversion is not on my property, and I plan to construct a new diversion point on my property. I plan to file a change application or submit a showing of compliance form to Ecology to cover this change in the point of diversion. I understand that if I plan to use the water for a different purpose or in a different location than described above, I must file a change application with Ecology.

Property owner signature:

Property Owner Name (2):

Address:

Phone Number:

Tax Parcel Numbers Owned within Authorized Place of Use:

Share of Qi, (gpm or cfs):

Share of Qa, (acre-feet):

Authorized purpose(s) of use:

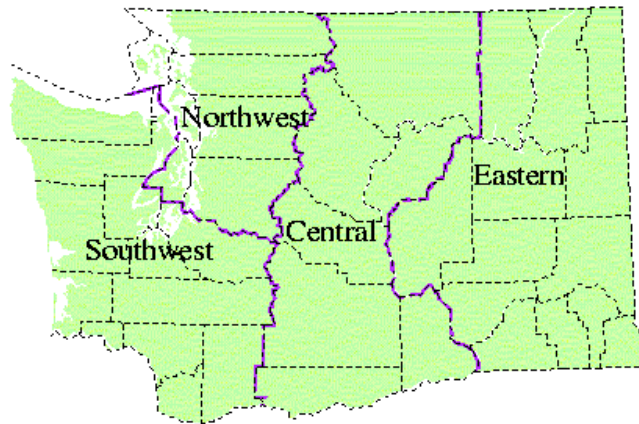
Check one of the following:

- ☐ The authorized point of diversion is on my property and will continue to be used.
- ☐ The authorized point of diversion is not on my property, but I have entered into a shared use agreement with the owner of the authorized diversion point.
- ☐ The authorized point of diversion is not on my property, and I plan to construct a new diversion point on my property. I plan to file a change application or submit a showing of compliance form to Ecology to cover this change in point of diversion. I understand that if I plan to use the water for a different purpose or in a different location than described above, I must file a change application with Ecology.

Property owner signature:

Please forward your completed form to the appropriate region office below.

Ecology Northwest Region Office 3190 - 160th Ave. SE Bellevue, WA 98008-5452 Information & Receptionist: 425-649-7000 TTY for Hearing Impaired: 711 or 1-800-833-6388	Ecology Southwest Region Office Mailing Address: PO Box 47775 Olympia, WA 98504-7775 Physical Address: 300 Desmond Drive Lacey, WA 98503 Information & Receptionist: 360-407-6300 TTY for Hearing Impaired: 711 or 1-800-833-6388
Ecology Central Region Office 15 West Yakima Ave -- Suite 200 Yakima, WA 98902-3452 Information and Receptionist: 509-575-2490 TTY for Hearing Impaired: 711 or 1-800-833-6388	Ecology Eastern Region Office N. 4601 Monroe Spokane, WA 99205-1295 Information and Receptionist: 509-329-3400 TTY for Hearing Impaired: 711 or 1-800-833-6388



Ecology is an equal opportunity employer. To receive this document in an alternative format, please contact the Water Resources Program at (360) 407-6000 or 711 or 1-800 833-6388 (TTY)

NOTIFICATION OF WATER RIGHT APPLICATIONS TO INDIAN TRIBES

Resource Contact: Coordination and Technical Services Section

Effective Date: 2-12-90

Revised: 2-12-90

References:

Purpose: To further the state's government to government relations with federally recognized tribes located in the state of Washington with respect to the cooperative management of water resources within the state.

Application: This policy applies only to water right applications received pursuant to chapters 90.03 and 90.44 RCW.

1. Notify the appropriate Indian tribe

The Department of Ecology, Water Resources Program, will notify the appropriate Indian tribe of water right activities which affect waters that border, flow through, or are within the exterior boundaries of their Indian reservation, their usual and accustomed fishing areas, or traditional use areas. Notification concerning new water right applications and applications to change existing water rights will be sent to the appropriate tribe.

2. Notification is tribal specific

Each tribe has specific concerns related to water resource management. Separate and different procedures exist for each tribe because the tribes have expressed different needs. For example, some tribes do not want to be notified of ground water applications while others do not want to be notified of any proposed appropriation less than 1 cubic foot per second of water. Tribes can revise their geographic areas of interest at any time. Please see PRO-1105A for tribal specific procedures.

3. Tribal comments

A sixty-(60) day tribal review and response time on each water right application will be provided. If for some reason comments cannot be provided within sixty (60) days, additional time may be provided upon written request. The justification for delayed commenting on a particular water right application should be based on inaccessibility of the project site due to weather and/or inability to assess impacts due to current hydrology.

Tribal comments should be substantive in nature. They should relate specifically to fish biology, fish management, wildlife, or habitat issues and impacts. Current information, based on field investigations, is preferred. Projected impacts of a proposed appropriation should be site specific and quantified to the extent possible.

4. Consideration of comments received from Indian tribes

The tribe's commenting official will be contacted by the regional office if clarification of tribal comments is required. An effort will be made to work out any differences, related to the factual situation of the application, between the regional office and the commenting official for the tribe. Tribal comments will be addressed in the report of examination. A copy of the report of examination will be provided to the tribe on any application upon which the tribe submitted substantive comments. If the tribe's response on any application is "no comment," a copy of the report of examination for that application will not be sent to the tribe.

5. Dispute resolution with Indian tribes

If differences of opinion cannot be worked out between the regional office and the commenting official for the tribe, the section supervisor will seek guidance from the program manager. The dispute resolution process will be exhausted before a report of examination is issued. See procedure PRO-1043A for dispute resolution process. A report of examination, which significantly deviates from the substantive comments provided by the tribe, may be issued only upon approval of the program manager.

Hedia Adelman
Program Manager
Water Resources Program

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

**POL 1120 WATER RESOURCES PROGRAM POLICY FOR CONDUCTING
TENTATIVE DETERMINATIONS OF WATER RIGHTS**

Resource Contact: Policy and Planning Section Effective Date: August 30, 2004
Revised: NEW

References: RCW 43.27A.190; RCW 90.03.290, 90.03.380, 90.03.390 & 90.03.397;
RCW 90.44.100 & 105; RCW 90.14.130; and POL 1070 and 1200

Purpose: To define tentative determinations and describe situations in which a
tentative determination of a water right is required. The policy sets forth
methods and tools which can be used to conduct a tentative determination.

Application: This policy is applicable to the investigation of changes or transfers to
existing water rights and enforcement actions.

This policy supercedes any previous policy statement with which it conflicts.

Definition. The following definition is intended within this policy:

“Tentative determination,” means a determination of the extent and validity of an existing water right established pursuant to either chapter 90.03 RCW or 90.44 RCW, or claimed pursuant to chapter 90.14 RCW. Such determinations are tentative, as final determinations of the extent and validity of existing water rights can only be made by Superior Court through a general adjudication of water rights.¹

Evaluation.

1. Who makes a tentative determination?

The department of Ecology or a water conservancy board may make a tentative determination.

2. What is a tentative determination?

A tentative determination is a water conservancy board's or the department of Ecology's finding of the amount of water perfected and beneficially used under a water right that has not been abandoned or relinquished due to non-use. In a proposal to change or transfer a water use, a tentative determination may include a decision as to the portion of the water

¹ Recent court cases have concluded that the department's authority on making tentative determinations is limited to establishing the degree to which water use complies with the attributes of the water right, rather than adjudicating between water users. See *Rettkowski v. Department of Ecology*, 219 Wn. 2d 219, 858 P. 2d 232; *R.D. Merrill v. Pollution Control Hearings Board* 137 Wn. 2d 118, 969 P.2d 459 (1999); *Okanogan Wilderness League v. Town of Twisp* 133 Wn. 2d 769, 947 P. 2d 732 (1997) and *Public Utility District Number One of Pend Oreille County v. Department of Ecology* 70372-8 (2002).

**POL 1120 WATER RESOURCES PROGRAM POLICY FOR CONDUCTING
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right that is eligible for change, for instance, in some cases only consumptively used water may be eligible for change. A tentative determination is conducted for all uses associated with the entire certificate, permit or claim. In situations where forfeiture of water is not an issue, a simplified tentative determination may be needed.

3. Under what circumstances should a tentative determination be conducted?

A tentative determination is made in association with Ecology's and water conservancy boards' permitting activities. A tentative determination is required when:

- a. Evaluating uses associated with an existing surface water right that is the subject of an application for change or transfer under RCW 90.03.380, 90.03.390 or 90.03.397;
- b. Evaluating uses associated with an existing groundwater right that is the subject of an application for change, transfer, or consolidation under RCW 90.44.100, 90.44.105, or 90.03.380;
- c. Evaluating water uses appurtenant to the existing and proposed place of use under an application for change or application for a new water right;
- d. Evaluating water uses that may be considered as potentially impaired under an application for change or application for a new water right;
- e. Evaluating existing water uses associated with water rights pursuant to RCW 90.14.130 or other regulatory statutes that results in a departmental order.

4. When, for example, is a tentative determination not warranted?

- a. When the department administratively recognizes the division of a water right resulting from a property sale or transfer pursuant to the provisions of POL 1070.
- b. When consolidating exempt wells under an existing water right permit or certificate pursuant to RCW 90.44.105².
- c. When a water right is donated pursuant to RCW 90.42.080(1)(b) & 5, and 90.42.040(9)³.
- d. When a water right is acquired as a result of a water conservation project pursuant to RCW 90.42.040(7)³.
- e. When a replacement well is installed pursuant to RCW 90.44.100.

² The water quantities associated with the exempt well are established by RCW 90.44.105 or by agreement with the Department of Health.

³ Chapter 90.42 RCW contains various requirements for determining the extent and validity of trust water right acquisitions. See *Washington Water Acquisition Program, Finding Water to Restore Streams* (March 2003, Publication No. 03-11-005).

**POL 1120 WATER RESOURCES PROGRAM POLICY FOR CONDUCTING
TENTATIVE DETERMINATIONS OF WATER RIGHTS**

5. What is a simplified tentative determination?

A simplified tentative determination may be conducted when a tentative determination or other actions confirming beneficial use of the water right has recently occurred. Under these circumstances, an investigation of the complete history of the water right is not required. Instances where simplified tentative determinations can be conducted include:

- a. The existing water right has had recent departmental action, such as the issuance of a change approval within the last 5 years;
- b. The existing water right was confirmed as part of an adjudication or other court action that determined the extent and validity of the right within the last 5 years;
- c. The existing water right is for a municipal water supply in accordance with RCW 90.03.330(3).

6. How are tentative determinations conducted?

Generally, tentative determinations include an examination of the record of historic water use. Year-by-year demonstration of water use may not be required for the evaluation. However, yearly water use records may be appropriate if such records are available, if there are allegations of non-use, or if the proposed action prompts a closer examination of the water right record. For instance, water right changes which involve adding irrigated acres to an existing water right or adding an additional purpose of use require an assessment of the most recent five years of continuous water use.⁴ For simplified tentative determinations (conducted on water rights where forfeiture of water is not an issue), year-by-year demonstration of water use is generally not required.

- a. Examine the available materials to verify the applicant's assertions of historic beneficial use of water. The agency may require adequate information be provided by the applicant, may conduct its own investigation, or may do both. Evidence of the extent of the beneficial use, water quantities used, and other characteristics of the water use may include direct water measurement and observation by the investigator, declarations and affidavits of parties with personal knowledge of historic water use on the subject property, water meter records⁵, power records, crop or product sales records, water billing records, population estimates, county assessor records, aerial or other historic photographs, remote sensing imagery, crop irrigation guides, water duty publications, land use or tax records, field surveys and other data.
- b. Materials should be reviewed so that a reasonable, objective conclusion can be made as to project intent and initiation, the date of first use of the water, the period and rate of

⁴ See POL 1210 and PRO 1210 for guidance on establishing water use and estimating the annual consumptive quantity of a water right.

⁵ Ecology prefers metered water use data when available (Chapter 173-173 WAC).

**POL 1120 WATER RESOURCES PROGRAM POLICY FOR CONDUCTING
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development of the original water use, the history associated with any expansion or contraction of water use, and the quantity of water appropriated on both an instantaneous and annual basis, the place of use and the purpose of use. The review should investigate whether the materials support a pattern of consistent water use to determine if subsequent to the perfection of the water right, some or all of the water right has been forfeited or abandoned. A prolonged period of non-use should be a signal to the investigator to request additional information from the applicant or to assemble additional materials that may provide a clearer picture of historic water use. Although there are numerous tools and methods available for reviewing historic use of water under a water right, generally tentative determinations require taking the following steps:

- i. *Evaluate the instantaneous and annual quantities of water diverted or withdrawn and put to beneficial use, including determinations of consumptive and nonconsumptive use.* Any evidence that supports the applicant's assertions of water use should be examined. The investigator should work with the applicant to assemble the information necessary to determine historic beneficial use. The tentative determination will consider whether the water quantities diverted or withdrawn are consistent with a reasonable water use in accordance with Ecology v. Grimes.⁶
- ii. *Verify the source of water.* Verification of the existing water source, through a site visit and/or hydrologic or hydrogeologic evaluation, should be done in conjunction with evaluating historic records of diversion or withdrawal quantities.
- iii. *Determine the location of the diversion or withdrawal facilities.* Determine the location of the existing diversion or withdrawal facilities and consider whether the location of the facilities have changed since establishment of the water use. Additionally, consider whether there have been modifications to the original facility that may imply that the water quantities available through the existing system differ from water quantities available through any previous system. Historic information or site observations of remnant portions of old diversion or withdrawal systems should alert the examiner that additional information may be necessary to clarify any previous modifications of use.
- iv. *Determine the place of use and extent of beneficial use.* Determine the location of the place of water use. Consider whether the place of use has changed since the water use was established. Consider whether the original water diversion or withdrawal facility could have supplied water to the existing place of use.

⁶ See *Ecology v. Grimes*, 121 Wn.2d 459, 852 P.2d 1044 (1993)

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- v. *Determine the purpose of use.* Determine the purposes of use to which the water has been historically applied and the quantities of water beneficially used for each purpose of use. Consider whether the existing water uses are consistent with historic water uses.
 - vi. *Determine the period of use associated with each beneficial use.*
Determine the period of use for each of the recognized beneficial uses.
 - vii. *Determine the date of priority of the water right recognized through a tentative determination.* The date of priority has little import in evaluating the application, since applications for change or transfer and applications for permit can not result in the impairment of *any* existing water right. The priority date is determined by considering the history of establishment of the water use, assertions by the water user, and applicable laws but is necessary to complete the final paperwork at completion of the change/transfer.
- c. The investigator should use best professional judgment in determining the amount of data needed and in making a tentative determination of the extent and validity of a water right.

7. Tentative determinations in the face of unauthorized changes to water rights.

- a. In some situations, changes to historic uses associated with water rights have been made in the diversion or use of water without first obtaining authorization for the changes pursuant to chapters 90.03 and 90.44 RCW. Such unauthorized changes to existing water rights are commonly referred to as “de facto, or after-the-fact changes”.
- b. When evaluating unauthorized changes to water rights⁷, the department generally considers beneficial use to be the measure of the right, even if some attributes of the right may not be consistent with the current authorization⁸. However, determining whether the beneficial use is associated with the right proposed for change can be difficult depending on the unauthorized changes that have occurred. For example, an unauthorized change in point of diversion may be relatively easy to investigate, whereas an unauthorized change in purpose or place of use may be very difficult to investigate.
- c. Use of water in a manner inconsistent with one’s water right authorization may not result in forfeiture or abandonment of that right, provided such use is beneficial and not wasteful.⁹ Consideration of unauthorized water use as representing beneficial use of the water right is determined on a case by case basis, through careful examination of the

⁷If a permit writer determines that an unauthorized change has occurred that is not the subject of the current application for change, an application and public notice amendments are required.

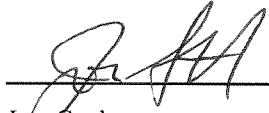
⁸ Several courts have considered the relative weight of beneficial use and unauthorized changes with conflicting decisions (e.g. *Ecology v. Abbott* (1985); *Ecology v. Grimes* (1993); *Russell Smith v. Water Resources Dept. (Oregon)* (1998); *Ecology v. Acquavella (Lavinal)* (2003); *USA and Pyramid Lake Paiute Tribe of Indians v. Alpine Land & Reservoir Co. and Nevada State Engineer* (2003)). The permit writer should consider the circumstances of the specific situation in determining the relative weight of beneficial use and appurtenancy.

⁹ Ecology may use enforcement actions to encourage compliance with RCWs 90.03.380 and 90.44.100.

**POL 1120 WATER RESOURCES PROGRAM POLICY FOR CONDUCTING
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specific facts associated with the water right file. Determinations of beneficial use of the water right must be reviewed and approved by the appropriate regional section head.

- i) If the investigation does not support the extent of the original right to the satisfaction of the permit writer and the regional section head, then the permit writer must conclude that the water right, in whole or in part,
 - (1) was not perfected; or
 - (2) has been forfeited; or
 - (3) was abandoned.
- ii) If the investigation supports the extent of the original right to the satisfaction of the permit writer and the regional section head, then the permit writer may include, in whole or in part, the beneficial uses that were not previously authorized within the tentative determination (see POL 1200).



Joe Stohr
Water Resources Program Manager

POLICY FOR THE EVALUATION OF CHANGES OR TRANSFERS TO WATER RIGHTS

Resource Contact: Policy and Planning Section

Effective Date: January 8, 1999

Revised: NEW

References: RCW 90.03.380 authorizes the department to approve applications for change or transfer to existing rights; RCW 90.03.390 authorizes the department to approve temporary changes or transfers to existing rights under certain conditions; RCW 90.44.100 authorizes the department to approve certain amendments to existing groundwater rights; and RCW 90.44.105 authorizes consolidation of wells under certain conditions. Several court cases and an Attorney General's opinion referenced in this policy also establish or clarify important legal principles.

Purpose: To document generally applicable policies that the Department of Ecology will use in implementing RCW 90.03.380, RCW 90.03.390, RCW 90.44.100 and RCW 90.44.105. These statutes authorize the department to consider applications to transfer the place of use, change the point of diversion, and/or the purpose of use of existing water rights, as well as the addition of irrigated acres or the addition of uses to existing water rights documented by certificates, permits and water right claims.¹

Application: This policy relates to the evaluation of applications for change or transfer of water right by Ecology or by county conservancy boards pursuant to RCW 90.03.380, 90.03.390, 90.44.100 or 90.44.105 and to add irrigated acres or additional purposes of use to a water right.² POL-1230 addresses the consolidation of wells under RCW 90.44.105 and must be followed in addition to this policy.

This policy supercedes any previous policy statement with which it conflicts.

1. Definitions:

“Amendment,” means the modification, in whole or in part, of a groundwater permit or certificate allowing the construction of additional or replacement well(s) or consolidation of rights associated with uses exempt from permit requirements by RCW 90.44.050 with a legal use or uses that are not exempted under RCW 90.44.050.

“Change,” means a modification or combination of modifications, in whole or in part, of

¹ See Department of Ecology v. Abbott, 103 Wn. 2d 686, 694 P.2d 1071 (1985)

² See POL-1210 for additional policy if it is proposed to add new uses or irrigated acres.

the point of diversion or withdrawal, purpose of use, or a transfer of water right, or other limitation or circumstance of water use. Within this policy, “change” also includes the meaning of “amendment” and the meaning of “transfer”.

“Impair” or “impairment” means 1) to adversely impact the physical availability of water for a beneficial use that is entitled to protection, including earlier filed applications, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flows levels established by rule.

“Reasonably efficient practices,” means those practices including, but not limited to, methods of conveyance, use, and disposal of water which are reasonable and appropriate under the circumstances to bring about beneficial water use without waste³.

“Return flow,” means any water that is appropriated using reasonably efficient practices and subsequently returns to the stream from which it is diverted, or to some other stream, to a body of groundwater, or that would do so if not intercepted by some obstacle or another appropriation.

“Seasonal change,” means any temporary change or transfer proposal or its approval to change, amend, or transfer the place of use or point of diversion/withdrawal of water right for a specified part of the year. A seasonal change is subject to this policy and is proposed in the same manner as any other modification of a water right.

“Temporary change,” means to change, amend, or transfer the place of use or point of diversion/withdrawal of water right for a limited period of time or until a specified circumstance is met. A temporary change is subject to this policy and is proposed in the same manner as any other modification of a water right.

“Transfer,” means a modification, in whole or in part, of the place of use of a water right.

“Water waste,” means water that is diverted or withdrawn in excess of the amount required for beneficial use based upon reasonably efficient practices. The waste of water is a violation of the water code and is subject to regulation by the department.

2. Seasonal changes or transfers and temporary changes or transfers are subject to this policy.

Evaluation of seasonal or temporary changes and transfers must follow this and other applicable policy. Seasonal or temporary changes shall not be issued to permanent projects as a means of avoiding the application processing waiting period. See PRO-

1000 for processing guidance concerning seasonal and temporary changes or transfers.

3. The water right proposed to be changed will investigated.

- (a) The department will investigate the water right and make a tentative determination of the extent to which a water right actually exists and is valid for change³. The tentative determination shall consider the legal authority to have perfected a right, the means by which the right was originally established, the historical development and use of water, and the practices employed to divert, convey and use water. The tentative determination shall not recognize a water right in excess of the amount historically put to beneficial use in compliance with state water law and applicable rules. No water quantities shall be recognized beyond the amount necessary to accomplish the beneficial use employing reasonably efficient practices. Water use in excess of the quantities necessary using reasonably efficient practices constitute water waste.
- (b) The department may require information beyond that required in the application from the applicant necessary to evaluate the application for change or transfer. The department will provide a reasonable time for the applicant to submit the required information.
- (c) The department will determine, in accordance with Policy 1060, whether the water right has been abandoned as a matter of common law or is subject to relinquishment as provided by Chapter 90.14 RCW.
- (d) Reasonably efficient practice evaluations are made on a case by case determination that may recognize that water is diverted in a quantity that compensates for inefficiencies, not exceeding those which are typical for the diversion/distribution systems being employed. An evaluation of reasonably efficient practices includes consideration of prevailing local practices and custom; and the adequacy of system maintenance.⁴

4. Consideration for evaluating change proposals

- (a) Impairment considerations: Any proposed change or aspect of a proposed change is subject to denial or conditioning if it would impair any other water right or any previously filed application. To evaluate the potential for impairment to occur, a tentative determination of the extent and validity of the other potentially conflicting water rights must be made. Any tentative determination will be made in the manner outlined by this policy for a tentative determination of the water right proposed for change or transfer.

³ See Rettkowski v. Department of Ecology, 122 Wn.2d 219, 858 P.2d 232 (1993).

⁴ See Ecology v. Grimes, 121 Wn.2d 459, 852 P.2d 1044 (1993).

- (b) Public interest considerations: An application cannot be approved if approval would directly conflict with any statute or rule or would be a detriment to the public interest.
- (c) Historic use considerations: A water right or portion thereof that has not been previously put to beneficial use may not be changed.⁵ Exceptions can be considered with regard to changing the point of withdrawal or place of use authorized by a groundwater permit.
- (d) Exempt Groundwater withdrawals: A groundwater right based upon a beneficial use pursuant to the exemption from permit requirements provided under RCW 90.44.050 may not be authorized for change unless such authority is specifically granted to the department by statute. A groundwater right for the purposes and water quantities described by the groundwater exemption from permit that predates the state groundwater code, RCW 90.44, for which a permit or certificate has not issued may not be authorized for change unless such authority is specifically granted to the department by statute.⁶ One such authority is contained within RCW 90.44.105, which authorizes the consolidation of permit exempt groundwater uses with another groundwater right that is based upon a permit or certificate.⁷
- (e) Enlargement: The amount of water appropriated, either on an instantaneous basis or cumulatively during a period of use, cannot be increased through a water right change. The acreage authorized to be irrigated under a water right, as tentatively determined by the department is a limitation under the right to irrigate and may only be increased in accordance with RCW 90.03.380 (1).⁸ Policies and procedures relating to adding additional irrigated acres are contained in POL 1210 and PRO-1000.
- (f) Season or period of use: The department may authorize changes in the season of use of water if, in addition to any other applicable public interest or impairment consideration for a change⁹:
 - (i) Altering the period of use is related to and necessary to effect another proposed change in the right (e.g. changing the purpose of use);

⁵ See Okanogan Wilderness League v. Town of Twisp, 133Wn, 2d 769, 947 p.2d 732 (1997).

⁶ See AGO 1997 No. 6.

⁷ See Policy No. 1230.

⁸ See Schuh v. Ecology, 100 Wn. 2d 180, 667 P.2d 834 (1984); Kummer v DOE, PCHB No. 85-188 (1987); Benningfield v DOE, PCHB No. 87-106 (1987). RCW 90.03.380 was amended in 1997 to allow conserved water to be used on additional land if the amount consumptively used would not be increased.

⁹ See R. D. Merrill Co., et. al. Vs State, Pollution Control Hearings Board, et. al., No. 64607, (Slip op., January 7, 1999)

- (ii) The net effect on streamflows and instream values must be neutral or positive. A reduction in streamflows during part of the year may be allowed if it is offset by an increase in streamflows during another time of year provided that the overall net effect on instream resources is positive. Ecology will consult with the state Department of Fish and Wildlife and other fishery and habitat managers as appropriate for assistance in making determinations related to effects on water bodies.
- (iii) Mitigation of any impacts to existing rights or streamflows is the responsibility of the party requesting the change. Mitigation proposals should be provided in writing as part of the application. Mitigation proposals may also be received after impacts to existing rights or instream flows are identified. The department will consider reasonable and credible mitigation proposals in accordance with existing law.
- (g) Limitations in the change of return flows: A change to a water right may not generally cause a reduction in return flow without a balancing reduction in the diverted or withdrawn water quantity. Any reduction in return flow may not impair another water right dependent upon that return flow or have an adverse effect to the receiving water source. This policy statement does not preclude the recapture and reuse of water by the original appropriator for authorized use(s).

The following are typical examples of return flows when water is used employing reasonably efficient practices:

- (1) Water applied to land in excess of the soil water holding capacity.
- (2) Water lost in conveyance that, if not intercepted, would return to a water source.
- (3) Water discharged at the end of a diversion system that, if not intercepted, would return to a water source.
- (4) Water discharged as operational spill(s) that, if not intercepted, would return to a water source.
- (5) Water that is used for fish by-pass purposes.
- (6) Effluent from a sewage treatment system that has historically been discharged to a fresh water body.

5. Changes, if approved, may include conditions.

Conditions to ensure that the beneficial water use continues to be exercised in water quantities not greater than those historically perfected and reasonably necessary, without

an increase in annual consumptive quantity, and without impairment of existing rights or detriment to the public interest may be placed upon any approval of a change.

Conditions may include, as appropriate, metering requirements, limitations in season of use, instream flow protection requirements, limitations on the crops to be grown, or specifications for system design and/or operation.

6. Mitigation.

The department must consider an applicant's proposals to mitigate adverse effects on other water rights, streamflows, and/or the public interest if submitted prior to the issuance of a decision.¹⁰

7. A Report of Examination will document the investigation and an order shall document the decision and authorize the change to occur if approved.

The department will consider and address in a report of examination, as appropriate, at least the following:

- (a) A description of the water right proposed for change or transfer and the tentative determination as to the validity and quantification of right(s), together with a description of the historical/water use information that was considered;
- (b) A description of any protests, objections or comments including comments provided by other agencies, Indian Tribes, or interested parties and the department's analysis of each issue raised.
- (c) A discussion explaining compliance with the State Environmental Policy Act.
- (d) An analysis of the effect of the proposed change or transfer on other water rights, pending applications, and instream flows established under state law;
- (e) A narrative description of any other water rights or other water uses associated with either the right as currently authorized or the right as proposed to be changed and an explanation of how those other rights or uses will be exercised in harmony with the right proposed to be changed;
- (f) An analysis of the effect of the transfer on the public interest;
- (g) Any recommendation or conclusion that an existing water right or portion of a water right has been forfeited due to non-use;
- (h) A description of the results of any geologic/hydrologic investigations that were considered;

¹⁰ See Department of Ecology v. Theodoratus, No. 64527-2, (Slip Op., July 2, 1998)

- (i) A list of conclusions drawn from the information related to the transfer proposal and a complete description of the department's decision;
- (j) Conditions and limitations recommended for placement on an approval or other corrective action necessary to maintain the water use in compliance with state laws or rules;
- (k) A description of any requirement to mitigate adverse effects on other water rights, the water source, or the public interest;
- (l) A schedule for development and completion of the change or transfer if approved in part or in whole, that includes a definite date for completion of the change and the application of water to authorized beneficial use.

An order documenting the decision of the department shall be issued with the Report of Examination. If the proposed change is approved, the order represents authority to proceed with the change under the conditions and as provided within the decision and Report of Examination.

8. Documentation of a completed authorized change or transfer.

The appropriate document certifying that the change or transfer was accomplished as authorized shall not be issued until the change or transfer has been physically completed and water fully put to use to the extent necessary in accordance with the authorization¹¹. See PRO-1000 for guidance concerning the documentation of a completed change or transfer of a water right.

/s/ Keith E. Phillips

Keith Phillips

Water Resources Program Manager

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

¹¹ See Procedure PRO-1000.

**POLICY FOR THE EVALUATION OF CHANGES TO ENABLE IRRIGATION OF
ADDITIONAL ACREAGE OR THE ADDITION
OF NEW PURPOSES OF USE TO EXISTING WATER RIGHTS**

Resource Contact: Policy and Planning Section Effective Date: 07/12/04
Revised: NEW

References: RCW 90.03.380(1).

Purpose: To document generally applicable procedures that the Department of Ecology will use in reviewing water right change applications pursuant to RCW 90.03.380(1) that enable irrigation of additional acreage or the addition of new purposes of use to existing water rights.

Applications to change a water right may be approved if the following conditions apply:

- There will be no increase in annual consumptive quantity.
- There will be no impairment of other water rights.

Application:

This policy and the procedures below apply to change applications involving the addition of irrigated lands or new purposes to a water right. Ecology interprets the “addition of new uses” under RCW 90.03.380(1) to mean the addition of a previously unauthorized purpose(s) of use, while retaining an existing purpose of use. If an existing purpose of use will not be retained, changing a water right to one or more new purposes of use does not trigger an annual consumptive quantity determination.¹

This policy supplements:

- POL-1200, Policy for the Evaluation of Changes or Transfers to Water Rights.
- Procedure PRO-1210 Calculating and Applying the Annual Consumptive Quantity (ACQ)

Procedures to evaluate applications to change a point of diversion are not contained in this policy. This policy supersedes any previous policy statement with which it conflicts.

¹ POL 1070 allows Ecology to recognize the agreed division of a water right where multiple land owners own land to which the water right is appurtenant. Where Ecology has recognized such a division and a change is filed on a portion of the original right, the permit writer only performs an ACQ evaluation on the portion of the original right proposed for change and only if such an evaluation is required by statute as described herein.

Definitions. The following definitions are intended within this policy:

- **“Annual Consumptive Quantity”** means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.
- **“Diversion”** means to divert water from one course to another. Diversion, when used without qualification, includes the diversion of surface water and the withdrawal of ground water.
- **“Return Flows”** means waters that, after having been diverted for a beneficial use, escape control of the water right holder and return to a public water body. Return flows may include, for example, waters lost through conveyance systems inefficiency or waters used for a beneficial purpose that are not fully consumed by the purpose of use.

Evaluation.

- 1) The application process to add irrigated acres or the addition of new purposes of use is the same as for any other change proposal, but it also includes additional steps, noted below.
 - a) The applicant uses Ecology’s standard application for change of water right form and the change is processed in accordance with Procedure PRO-1000 and other applicable rules and policies.
 - b) Ecology evaluates the application in accordance with Policy POL-1200, general change policies, in addition to this policy, and PRO-1210.
- 2) Calculate the amount of water available to irrigate additional acres or to add the new purpose(s) of use(s). This calculation should include the following elements of water use:
 - a) The annual quantity of water authorized for use under the water right
 - b) The amount of water put to beneficial use
 - c) The estimated return flow
 - d) The annual consumptive quantity²

² e.g., Water that is transpired by plants at the place of use, water that escapes from a reasonably efficient conveyance system or from the place of use but does not become return flows and water that is contained within a product or within a production byproduct.

- 3) Determine the extent and validity of the right proposed for change, including whether the right has been:
 - a) Beneficially used
 - b) Relinquished
 - c) Abandoned.
- 4) Determine the annual consumptive quantity by following these steps:
 - a) Determine the annual quantity of water diverted or withdrawn for each of the five years of continuous beneficial water use, taking into consideration the following types of data:
 - Measurement data
 - Evaluation of existing records
 - Estimation (see PRO – 1210).
 - b) Verify that the annual quantity determined as diverted or withdrawn in any year does not exceed the maximum quantity of the authorized water right for the purposes of determining the annual consumptive quantity.
 - c) Determine the return flow from each of the five years, then subtract the return flow for each year from the corresponding total annual quantity of water diverted or withdrawn. This represents the consumptive use for each of the five years.
 - d) Select the two highest years of consumptive water use and average the two highest years (See PRO-1210). This is the annual consumptive quantity defined in RCW 90.03.380.
 - e) Review the proposed project's consumptive use to determine its feasibility within the limits of the determined annual consumptive quantity.
 - Historic use may be used to estimate future use if the manner and extent of that use will remain unchanged. Any changes to a portion of that use should be evaluated for potential effects on the use as a whole. The consumptive portion of elements that are changed may be estimated in accordance with PRO-1210.
 - The estimated annual consumptive use for the new or expanded uses is the sum of existing unchanged uses, existing changed uses, and new or expanded uses. This use cannot exceed the annual consumptive quantity of the existing water right.
- 5) A decision approving a change must include:

- a) A determination of the extent and validity of the right;
- b) A finding that no other rights will be impaired;
- c) Limitations to ensure that the annual consumptive quantity is not exceeded as a result of the change;
- d) Metering provisions to verify compliance with the terms of the changed right.



Joe Stohr
Water Resources Program Manager

**POLICY FOR IMPLEMENTING THE CONSOLIDATION OF RIGHTS FOR
EXEMPT GROUND WATER WITHDRAWALS**

Resource Contact: Policy and Planning Section

Effective Date: 01/11/99

Revised: NEW

References: Chapter 446, Laws of 1997 (SSB 5785), Consolidation of exempt ground water rights. Now codified as RCW 90.44.105.

Purpose: To establish procedures the Department of Ecology (Ecology) will use to assist ground water right certificate and permit holders seeking to consolidate that right with a right or rights established under the ground water exemption in complying with Chapter 446, Laws of 1997.

Application: These procedures apply to all holders of water right permits and certificates of ground water right issued pursuant to chapter 90.44 RCW.

1. Amendment of a ground water right permit or certificate

Any person that holds a valid right to withdraw public ground waters may, with Ecology's approval, consolidate that right with one or more rights established under the exemption from the water right permitting process specified in RCW 90.44.050 without affecting the priority of any of the water rights being consolidated provided the statutory criteria specified in RCW 90.44.105 are satisfied. This process may be in lieu of the ground water right amendment process specified in RCW 90.44.100.

2. Application to Ecology

Any person seeking to consolidate a valid right to withdraw public ground waters with a right established under the ground water exemption must first make application to Ecology. The application must be filed on a change of water right application form provided by Ecology.

3. Ecology review of application, publication, and comment period

Ecology will review the application in the same manner as it does other applications for change. Once Ecology has all the necessary information and prior to Ecology making a determination on an application for such a consolidation amendment, the applicant seeking the consolidation must publish notice of the application in a newspaper of general circulation in the county or counties in which the well or wells for the right or rights to be consolidated are located. Preparation of the notice must be in compliance with the provisions of RCW 90.03.280. The notice must then be published once a week for two consecutive weeks. The applicant is responsible for providing evidence of the publication of the notice to the department. The comment period will be for thirty (30) days beginning on the date the second notice is published.

4. Basis for determination on proposed consolidation

Ecology will only issue a consolidation amendment after determining that, in lieu of meeting the conditions required for an amendment under RCW 90.44.100:

- a. The well from which water for the right established under the exemption is withdrawn taps the same body of public ground water as the well for the valid right to withdraw public ground waters;
- b. The applicant has made suitable arrangements to discontinue use of the well established under the exemption upon approval of the consolidation amendment to the permit or certificate;
- c. The applicant has made arrangements to properly decommission the well or wells using rights established under the exemption in accordance with Chapter 18.104 RCW and relevant Ecology rules;
- d. The applicant has entered into legally enforceable agreements, such as property title notes or locally-adopted ordinances, that bind present and future owners of the land through appropriate title limitations that prohibit the construction of another well or wells to serve the area previously served by the right established under the exemption; and
- e. Other existing rights, including ground and surface water rights and minimum stream flows adopted by rule, will not be impaired as a result of the consolidation.

5. Quantification of the right or rights to be consolidated

The maximum amount of water that can be consolidated from any right established under the exemption is that amount beneficially used by that water user, not to exceed 5000 gallons per day. Ecology will use the following procedure to determine the amount of water to be added to the applicant's permit or certificate once the use established under the exemption is discontinued:

- a. The amount will be the average withdrawal from the well, in gallons per day, for the most recent five-year period preceding the date of the application if the applicant has submitted credible supporting evidence and established that the amount used is consistent with the average amount of water used for similar use or uses in the general area in which the exempted use is located. Ecology will not use that amount if it finds:
 - (i) Credible evidence of nonuse of the well during the required period, or
 - (ii) Credible evidence that the exempted use of water or the intensity of the use of the land supported by water from the exempted use is substantially different than such uses in the general area in which the source is located.

- b. If credible evidence in support of the above amount is lacking, the amount will be eight hundred gallons per day for each residential connection, up to a maximum of five thousand gallons per day, or, in the alternative, an amount to be established by Ecology, in consultation with the Washington State Department of Health, that is reflective of average household and small-area landscaping water uses in that region of the state.

6. Presumption for approval

Ecology will accord a presumption favoring approval of a proposed consolidation if the requirements above are met and the discontinuance of the exempt use is consistent with one or more of the following:

- a. An adopted coordinated water system plan under chapter 70.116 RCW,
- b. An adopted comprehensive land use plan under chapter 36.70A RCW, or
- c. Another comprehensive watershed management plan applicable to the area containing an objective of decreasing the number of existing and newly developed small ground water withdrawals.

7. Prioritization of applications for consolidation

Ecology will make reviewing and deciding upon applications for consolidation of rights established using the ground water exemption a priority and will make decisions on consolidation applications within sixty days of whichever of the following events is later:

- a. The end of the comment period following publication of the notice by the applicant, or
- b. The date on which compliance with the state environmental policy act is completed.

The applicant and Ecology may extend the time for making a decision by prior mutual agreement.

8. Ecology procedures for consolidation, applicant's showing of compliance, and recording fees.

Ecology will, upon making a determination that the proposed consolidation meets the statutory criteria specified in RCW 90.44.105, prepare the appropriate superseding documents effecting the consolidation. Prior to Ecology's issuance of a superseding permit or certificate, the permittee or certificate holder must show compliance by submitting to Ecology a water well report from a licensed well contractor verifying that the well or wells for which the rights have been consolidated have been properly decommissioned.

The applicant may need to pay fees for the issuance of superseding documents. Fees payable to Ecology are set in RCW 90.03.470. Fees payable to the County Auditor for the recording of documents are specified in RCW 36.18.010.

9. Ecology response to showing of compliance

Ecology will issue a Report of Examination that summarizes its determinations pertaining to the consolidations. Based upon that Report of Examination, Ecology will send the applicant a superseding document reflecting the consolidation of that right with the right or rights established under the exemption. If the superseding document is a certificate, Ecology will forward the superseding certificate to the appropriate County Auditor for recording.

Ecology will revise its records to reflect the consolidation. The superseding right will reflect the different priority dates for those rights that have been consolidated. For each right to be consolidated, Ecology will assign as the priority date the date of first occupancy of the residence unless provided with compelling information that actual use of water commenced at an different date, in which case that date will be assigned as the priority date. The annual quantity for the superseding right will be increased by the amount of water determined to be used per day multiplied by the number of days per year the right had been used. The period of use for the irrigation component of any right established under the exemption will be considered to be from April 1 to October 31 of the year. The increase, if any, to the withdrawal rate for the superseding right will be based upon an evaluation by Ecology of the patterns of pumping and water usage from the wells for which the rights are being consolidated.

/s/ Keith E. Phillips

Keith E. Phillips
Program Manager
Water Resources Program

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

POLICY TO REPLACE AN EXISTING WELL OR TO ADD AN ADDITIONAL WELL(S)

Resource Contact: Policy and Planning Section

Effective Date: 09/30/99

Revised: NEW

References: Chapter 316, Session Law of 1997 (ESHB 2013, 1997 Regular Session) related to full and complete development of existing ground water right permits or certificates codified at RCW 90.44.100(3).

Purpose: To assist water right permit or certificate holders in complying with Chapter 316, Session Laws of 1997 and to state how Ecology will administer the law.

Applicability: To replace an existing well(s) or to add an additional well(s) to water right permits or certificates issued pursuant to chapter 90.44 RCW.

1. How can a ground water right permit or certificate be amended?

The ground water code provides the holder of a valid statutory water right permit or certificate two different ways to obtain an amendment to their water right permit or certificate to replace or add an additional well. The two different ways are:

- a. The water right permit or certificate holder may file an application for change of water right in accordance with RCW 90.44.100, or
- b. In certain circumstances, an amendment is statutorily granted (an application for change of water right is not required) upon a showing of compliance with RCW 90.44.100(3).

2. What is a Showing of Compliance with RCW 90.44.100(3)?

The showing of compliance documents the additional or replacement well(s) (see 3(a) through 3(g) of this policy statement) complies with the law regarding water rights and well construction requirements (See chapter 18.104 RCW and chapter 173-160 WAC).

An affidavit, with supporting information, signed by the water right permit or certificate holder and filed with the Department of Ecology's regional office would constitute a showing of compliance. See chapter 173-152 WAC for a description of the geographic areas served by each region.

3. How can a water right permit or certificate holder show compliance with RCW 90.44.100(3)?

A water right permit or certificate holder can show compliance with RCW 90.44.100(3) by sending a written affidavit to Ecology that identifies the water right permit or certificate proposed for amendment and addresses those attributes of the water right or well required by law to be the same for the new well(s) as the original well. The affidavit must document the instantaneous and annual use of water pursuant to the right from initial perfection of the right through the present. (Water rights are established by the actual application of water to a beneficial use.) In addition, the affidavit must include information about the well(s) constructed pursuant to the right, including the location (by Section, Township, Range); diameter and depth of the well(s); the length and position (in feet below land surface) and commercial specifications of all casing; static water elevation; and the length of screening and perforated zone in the casing for the well(s) to be replaced or that additional well(s) will be added to. The affidavit must verify that:

- a. The new well(s) or replacement well(s) taps the same body of public ground water as the original well(s);
- b. In the case of a replacement well(s), the use of the original well(s) has been discontinued and the original well(s) has been properly decommissioned as required under chapter 18.104 RCW and chapter 173-160 WAC;
- c. The combined withdrawal of water from a replacement well(s) or from a new additional well(s) and the original well(s) authorized by the water right certificate or permit has not enlarged the valid water right conveyed by the original water right certificate or permit to the extent it (the certificate) has been developed. In asserting the amendment will not enlarge a valid water right, meter data or other information demonstrating the use of water should be provided;
- d. The use of the new or replacement well(s) does not interfere with or impair water rights with an earlier priority date;
- e. The new or replacement well(s) is located no closer than the original well(s) to a well(s) or surface water body it might interfere with;
- f. The well(s) construction meets all construction requirements contained in the original water right including but not limited to depth, casing, sealing, and also shall be in compliance with chapter 18.104 RCW and chapter 173-160 WAC; and
- g. The new or replacement well(s) is located within the area described as the point of withdrawal in the public notice published for the original application for water right, or the most current published legal description in the file.

4. Does Ecology have a recommended format for a showing of compliance?

Yes. Ecology has a form entitled "Showing of Compliance with RCW 90.44.100(3)," the form has the number [ECY 040-74](#). You are not required to use the form. However, the statute requires the same information (as requested by the form) be submitted to Ecology to demonstrate compliance.

5. What will Ecology do in response to a showing of compliance?

If the showing of compliance conforms with the law, Ecology will make the affidavit attesting to compliance with RCW 90.44.100(3) a part of Ecology's public record associated with the water right permit or certificate. No superseding water right certificate will be issued to the certificate holder, because Ecology will not have evaluated the validity of the information supplied by the certificate holder or the historical development under the asserted right. A superseding permit will be issued to the holder of a water right permit who amends a permit pursuant to RCW 90.44.100(3).

If the showing of compliance does not appear to conform with the law, Ecology will return the affidavit along with an explanation of why the affidavit does not appear to comply with the law. The project proponent can clarify or change the affidavit and resubmit the affidavit to Ecology.

6. Can a water right permit or certificate holder request technical assistance from Ecology to show compliance with RCW 90.44.100(3)?

Yes. At the discretion of a person seeking to amend a water right permit or certificate pursuant to RCW 90.44.100(3), a written request for technical assistance in order to comply with the law may be filed with Ecology's regional office. See chapter 173-152 WAC for a description of the geographic areas served by each region. The written request for technical assistance should demonstrate why the water right permit or certificate holder believes a statutorily granted amendment under RCW 90.44.100(3) is appropriate and must provide supporting evidence (See RCW 90.44.100(3)(a) through RCW 90.44.100(3)(g)).

7. What issues need to be addressed in the notice or request to Ecology for technical assistance?

The issues to address in the request for technical assistance are the same as those listed in 3(a) through 3(g) of this policy. The proponent must identify the water right permit or certificate proposed for amendment and then address each of the points in 3(a) through 3(g).

8. What will Ecology do in response to a request for technical assistance?

Ecology will review the information provided for the proposed new or replacement well(s) and will respond, either verbally or in writing, to the notification. Ecology's role in regard to technical assistance is to (a) advise, based on the information at hand, that it either does or does not appear the proposed amendment complies with the law and (b) specify the manner of well(s) construction if necessary to comply with the well construction statute (chapter 18.104 RCW). The burden to comply with the law rests with the water right permit or certificate holder asserting an amendment pursuant to RCW 90.44.100(3).

In providing technical assistance, Ecology will inform the proponent of the change that it can not advise as to whether the water right sought to be amended is valid. Any written correspondence will contain the following sentences: *Nothing in this correspondence should be construed by you as affirming the validity of any water right. Ecology is providing information as to whether or not the amendment appears to conform to the statutory mandates of RCW 90.44.100(3).*

Keith E. Phillips
Program Manager
Water Resources Program

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.



DEPARTMENT OF ECOLOGY

Showing of Compliance with RCW 90.44.100(3)

Water Right Certificate or Permit Number: _____

Parcel tax identification number: _____

Landowner(s) name: _____

Part of complying with RCW 90.44.100(3) is for the project proponent to notify the Department of Ecology (Ecology) that the statutory criteria of RCW 90.44.100(3) have been satisfied. Please attach (to this document) the water well report for the additional or replacement wells and any additional information you have to support your affidavit.

Affidavit:

I, _____, do certify that I caused the well or wells described in the attached water well report to be drilled as additional or replacement wells for use under Water Right Number _____. This notice and attached documents describe and support my assertion that the replacement or additional well or wells comply with RCW 90.44.100(3) (a-g) and RCW 90.44.100(4), specifically:

- a. The well taps the same body of public ground water as the original well or wells;
- b. If a replacement well is constructed, the use of the original well or wells has been discontinued and the original well or wells have been properly decommissioned as required under chapter 18.104 RCW;
- c. If a new additional well has been constructed, the original well or wells are continuing to be used, but the combined total withdrawal from the original and additional well or wells has not enlarged the right conveyed by the original water use permit or certificate;
- d. The construction and use of the well does not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells;
- e. The replacement or additional well is located no closer than the original well to a well it might interfere with;
- f. The well or wells have been constructed in a manner approved by the department and in compliance with chapter 18.104 RCW and chapter 173-160 WAC; and
- g. The location of the replacement or new additional well or wells is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well. Both the original well and the additional or replacement well or wells are located in _____ (legal description).

Therefore the well is in compliance with the requirements for a statutorily granted amendment to the water right permit or certificate.

I understand the acceptance of this affidavit, and any attachments, by the Department of Ecology shall not be construed as affirming the validity of any water right permit or certificate. The

responsibility to comply with RCW 90.44.100(3) is with the water right permit or certificate holder asserting an amendment pursuant to RCW 90.44.100(3).

Name

Date

Acknowledgement:

State of Washington

County of _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this affidavit and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the affidavit.

Dated: _____

(Seal or stamp)

(Signature)

Residing in

Title

My appointment expires: _____

If you have any questions please contact the Water Resources Section of the closest regional office. Please submit copies of new well logs and decommissioned well logs along with this completed and notarized form to the nearest regional office.

Northwest Regional Office

3190 – 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7000; TDD (425) 649-4259

Eastern Regional Office

N. 4601 Monroe, Suite 202
Spokane, WA 99205-1295
(509) 329-3529; TDD (509) 458-2055

Vancouver Field Office

2108 Grand Boulevard
Vancouver, WA 98661-4622
(360) 690-7171; TDD (360) 690-7147

Southwest Regional Office

P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6300; TDD (360) 407-6306

Central Regional Office

15 W. Yakima Ave., Suite 200
Yakima, WA 98902-3452
(509) 575-2597; TDD (509) 454-7673

Nooksack Field Office

1204 Railroad Ave., Suite 200
Bellingham, WA 98225
(360) 738-6250; TDD (425) 649-4259

WATER RESOURCES ENFORCEMENT POLICY

Resource Contact: Coordination and Hydrology Section

Effective Date: 07-22-92

Revised: New

References: Chapter 18.104 RCW, Chapter 43.21A RCW, Chapter 43.83B RCW, Chapter 90.03 RCW, Chapter 90.14 RCW, Chapter 90.44 RCW, Chapter 90.4B RCW, Chapter 90.54 RCW, Chapter 173-160 WAC, Chapter 173-162 WAC.

Purpose: This policy provides guidance to achieve consistent application of, and compliance with, the laws and regulations of the state for the protection and development of surface and ground water; for the regulation and licensing of well contractors and operators; and for the regulation of well construction standards.

Application: This policy applies to all water resource staff, when enforcement actions are taken against a public or private party.

Authority: Authority for the State of Washington Department of Ecology to protect and develop surface and ground water is contained in the above referenced statutes. This authority includes the power to regulate and control the appropriation, diversion, and withdrawal of water; to prevent wasteful practices and protect the quality of waters of the state; and to achieve compliance through administrative orders, civil penalties, and criminal prosecution for violation of the laws, regulations, permits, and orders issued thereunder.

Authority to regulate and license well contractors and operators and to enforce state well construction standards is contained in the above referenced statutes. This authority includes the power to issue, deny, suspend, or revoke well construction licenses; to enter upon lands for the purpose of inspecting any water well; to establish standards for the construction of wells; prevent the pollution of any surface or ground water; and to issue administrative orders and assess civil penalties for violation of the laws, regulations, permits, and orders issued thereunder.

1. Enforcement overview

- a. Water Resources staff will encourage voluntary compliance through education and informal enforcement actions.

When voluntary compliance is not achieved, formal enforcement actions shall be used to assure compliance. All enforcement actions should be timely, completely documented, and pursued in an escalating manner until the violation is resolved.

Informal enforcement action is the first step in documenting and creating an historical record of a violation (see section 4). Options for informal enforcement action:

1. Warning letters, and
2. Field notices of non-compliance.

Formal enforcement action is based on statutory authority (see section 5). Options for formal enforcement action:

1. Administrative orders,
2. Field citations,
3. Civil penalties,
4. Suspension or revocation of well driller's license,
5. Court injunctions or orders, and
6. Criminal prosecution.

- b. Enforcement actions shall be timely.

Enforcement actions are most effective when taken in a timely manner. Informal enforcement actions should be initiated within 45 days from the date the violation was documented. Formal enforcement actions should be initiated within 30 days of documentation.

- c. Unauthorized use of water is a violation, and will be subject to enforcement actions by Water Resources staff.

Water use is considered unauthorized if the use is not consistent with the provisions of Chapter 90.03 and 90.44 RCW and the rules adopted by Ecology; and/or is not a vested right represented by a water right claim filed pursuant to the Registration Act Chapter 90.14 RCW.

- d. Enforcement action shall be pursued for public agencies, as well as private parties.

Enforcement procedures for public agencies may differ from private entities, but the goal of compliance shall not be subordinated to other considerations.

2. Coordination of enforcement actions

- a. Regional staff is encouraged to coordinate enforcement actions.

Occasionally enforcement of well licensing and construction standards may affect the concerns and responsibilities of other regions, agency programs, or state and federal agencies. Examples include the Department of Health, Bureau of Labor and Industries, and Tribal Governments. Staff is encouraged to share both information and resources.

- b. The enforcement coordinator at headquarters acts as liaison to the Attorney General's office in assisting with preparation of appeal cases.

The enforcement coordinator will also develop and present enforcement training opportunities to all staff who recommend, review, or sign enforcement actions. In addition, the Enforcement Coordinator is responsible for developing policies and procedures that maintain the continuity of our enforcement program.

3. Selecting enforcement response

- a. Selecting an appropriate response to a documented violation is accomplished by first classifying the magnitude of the violation.
 - 1. Minor violation- a violation of regulatory requirements, which does not create an actual or imminent threat to human health or the environment.
 - 2. Major violation- a violation having the potential to create, or actually creating, a threat to human health or the environment. Additionally, any repetition or continuation of a minor violation by an individual or company will be considered a major violation.
- b. The magnitude of the violation, along with the following discretionary factors will be the basis for selecting the appropriate enforcement response (see PRO-2005).
 - 1. Economic advantage gained by non-compliance,
 - 2. Violator's cooperation to resolve the violation, and
 - 3. History of previous violations.

4. Setting standards for enforcement

- a. All enforcement actions will be on approved boilerplate documents.

The use of boilerplates results in efficient and consistent documentation of violations. Enforcement boilerplates will follow an approved outline (see PRO-2005). Certain required legal language, such as statutory cites and appeal process, will not be modified by field inspectors. Paragraphs describing the particulars of the violation will be written by the field staff and inserted into the document as the outline indicates (PRO-2005).

- b. The well driller, drilling contractor, and property owner may be held liable for violations of well construction standards.

Enforcement action against a property owner can be taken when it is not possible or appropriates to act against the well driller for violations of well construction standards. The property owner shall receive a copy of any order or penalty issued to a well driller

resulting from improper construction of a well (18.104.155 RCW), as well as an explanation of the consequences of an improperly constructed well (see PRO-2005).

5. Informal enforcement actions

Informal enforcement actions will be taken to provide the violator with an opportunity to voluntarily comply with the law.

- a. Warning letter—informs the recipient that a violation has occurred, and outlines the steps necessary for compliance.
- b. Notice of non-compliance—informs the recipient that a violation has occurred, outlines the steps necessary for compliance, and requests a response from the violator within 30 days (see PRO-2010).

6. Formal enforcement actions

- a. Formal enforcement action may be initiated if either informal action does not encourage compliance, or if a major violation has occurred.

A Recommendation for Enforcement Action Memorandum will be completed by field staff for all formal enforcement actions and approved by regional section supervisors. Procedures for initiating and completing formal enforcement actions are contained in PRO-2005.

1. Administrative order—specifies actions or corrections to achieve compliance, and may precede a civil penalty action.
2. Field citations—issued as an immediate response to obvious violations of well construction standards or licensing requirements (see section 6).
3. Civil penalties—levied against private or public entities (see section 8).
4. Suspension and/or revocation of a license—a well driller's license may be suspended or revoked when escalated enforcement actions have failed to achieve compliance, and the violation continues (see section 7).
5. Court injunctions—continued violation after escalated enforcement action may require court intervention to correct initiated through Attorney General's Office (see PRO-2005).
6. Criminal Prosecution- deliberate and willful violation of well construction laws and regulations which results in a serious impact on human health or environment may require criminal prosecution to correct (see PRO-2005).

7. Issuing enforcement actions in the field

- a. An administrative order may be issued in the field by posting the paperwork on a drill rig, waterworks or diversion.

A posted order is appealable to the Pollution Control Hearing Board. (PCHB). A Recommendation for Enforcement Action Memo will be completed after the fact when a field order is issued.

- b. A penalty notice may be issued in the field using a field citation.

Regional field inspectors with signature authority and the prerequisite training may issue field citations as an immediate response to an obvious violation. A field citation constitutes a notice of penalty and is subject to the same appeals process (see section 8). Discretionary factors for assessing penalty amounts are discussed in PRO-2005. A Recommendation for Enforcement Action Memo will be completed after the fact when a field citation is issued.

8. Suspension or revocation of well driller's license

- a. Failure to renew a well drilling license will result in a 30-day suspension period.

If action is taken to renew the license within 30 days, the suspension may be terminated. Revocation proceedings will be initiated if no action is taken to renew the license. A license revoked for non-renewal may not be reissued. A licensee is eligible to reapply and retest to obtain a new well driller's license.

- b. Field staff may recommend suspension or revocation of the well driller's license for recalcitrant drillers.

A recalcitrant driller is one who continues to resist compliance after escalated enforcement action is taken. The well driller's license may be suspended by the program manager for a maximum of six months. If the well driller continues to resist compliance after suspension, the well driller's license can be revoked for a period of one year. The licensee is eligible to reapply for a new license after one year.

- c. If a license is suspended or revoked while a driller is constructing a well, the suspension or revocation order may contain a waiver which allows the driller to complete construction of the well within a specified time period.

9. Protecting water quality standards

In conjunction with the enforcement of water resource rules and regulations, field inspectors are granted authority under Chapter 90.48 RCW to control and prevent the pollution of surface and underground waters. Application of this enforcement tool should be coordinated with Water Quality personnel.

10. Assessing penalties

- a. Civil penalties may be assessed on a per day per violation basis for each separate offense.

The maximum penalty for violation of a referenced statute, rule, or the conditions of a regulatory order is \$100 per day per violation. In assessing a penalty, field staff should consider the previous history of the violator, degree of cooperation in resolving the violation, and the impact on public health and/or environment of the violation. Guidance on penalty assessment is contained PRO-2005.

- b. Labor and Industries (L&I) bonds can be attached for delinquent penalties.

L & I bonds can be attached by the state for delinquent penalties. Application of this enforcement action must be coordinated with the Attorney General's office.

11. Appeal process

- a. A Notice of Penalty may be appealed to the PCHB or to the regional office that issued the penalty (Application for Relief from Penalty), but the directives of a regulatory order can only be appealed to the PCHB.

An appeal is made to the regional office by an Application for Relief from Penalty. Only new information that mitigates or refutes the evidence will result in a reduced or dismissed penalty. Applications for Relief from Penalty will be acknowledged within 30 working days of receipt.

- b. Innovative settlements may be negotiated at the request of the violator.

An innovative settlement often requires the violator to do more than pay a penalty, and encourages continued compliance. The environmental benefit of a negotiated settlement must equal or exceed the economic impact of the original penalty. Field staff are encouraged to negotiate innovative settlements, (see PRO- 2005).

12. Tracking enforcement actions

Informal enforcement action shall be tracked at the regional level. Regions will establish their own methods for tracking informal enforcement actions, for example, an enforcement database or memorandums to file. Formal enforcement actions are tracked by Central Programs (PRO-2005).

13. Educating the regulated community

- a. The regulated community is informed of changes in Water Resources policies and procedures.

Knowledge of and compliance with the state of Washington's statutes and regulations is the responsibility of those engaged in activities regulated by the laws of the state. To assist the regulated community and the public, the program will publicize changes in our policies and procedures.

- b. The enforcement history of violator may be made available to the public upon request.

The Water Resources Program may choose to publicize enforcement actions as a way of educating the regulated community and public. Publication of news releases for enforcement actions is coordinated through the program's public information officer.

14. Training requirements

Water Resources enforcement staff are required to participate in Ecology's Enforcement Certification Program.

Water Resource personnel who recommend, review, or sign enforcement actions will attend mandatory enforcement training courses, and complete a Water Resources on-the-job training manual. The Central Programs Enforcement Unit maintains record of participation in this certification program. In addition, the Field Citation Training Course is a prerequisite to obtaining the signature authority to issue these enforcement actions in the field.

Hedia Adelsman
Water Resources Program Manager
Department of Ecology

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HEAT PUMPS

Resource Contact: Coordination and Hydrology Section

Effective Date: 6-10-92

Revised: New

Purpose: To provide guidance to program personnel in the management of water use associated with heat pumps.

Application: This policy applies to all water right applications and applications for change of water right received pursuant to chapter 90.03 RCW.

1. Heat pump water use is a beneficial use

The use of water as either a source of heat or to dissipate heat is a beneficial use of water.

2. Water rights and heat pumps

A water right permit is required for heat pumps that use:

- Surface water,
- Ground water in conjunction with single or group domestic uses exceeding 5,000 gallons per day, and
- Ground water in conjunction with industrial uses exceeding 5,000 gallons per day.

The 5000-gallon per day threshold requiring a permit is not an annual average value. Many small heat pump systems may operate on less than 5000 gallons per day for most of the year. However, if the peak day water use would exceed 5000 gallons per day of ground water, a permit is required.

Applications for heat pump water use will be considered in the same manner as other water right requests.

3. Classification of water use

A. Single Domestic, Group Domestic, or Industrial

The use of water in a heat pump associated with a single domestic residence will be classified as single domestic use.

The use of water in a heat pump associated with either a group of domestic residences or in conjunctive use with a group domestic use shall be classified as group domestic.

The use of water in a heat pump associated with an industrial or commercial interest shall be classified as industrial.

B. Consumptive or Nonconsumptive

Classification of water use in a heat pump shall be in agreement with POL-1020, Consumptive and Nonconsumptive water use.

System configuration to ensure a nonconsumptive use of water is preferred. While return water injection or infiltration is not required, it is to be encouraged of the applicant.

In water short regions or where the issuance of a consumptive water right might cause impairment of existing rights, system configuration to ensure nonconsumptive water use can be required.

4. Special considerations for groundwater reinjection

Discharges to aquifers other than the source aquifer will not be allowed under the nonconsumptive classification.

A judgement as to the ability of the source aquifer to accept discharge water and not create wet areas through ground water mounding shall be made.

An injection well shall be designed to accept discharge water in an efficient manner at the same rate of flow as that produced by the source and consider the decreasing efficiency of the injection well over time.

5. Coordination with water quality program

The Water Quality Program has an adopted policy on heat pumps, Water Quality No. 17, adopted September 1987.

If an applicant proposes or we may require injection or infiltration of ground water withdrawn for use in a heat pump, the permit writer shall contact the Water Quality program and ensure that an injection well permit (see chapter 173-218 WAC) can be obtained and that the applicant has applied for the same if necessary.

Water right and water quality reviews should be conducted concurrently.

Hedia Adelsman
Program Manager
Water Resources Program

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